Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

Cathy J. O'Connor,
Plaintiff-Appellant-Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee-Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ORIGINAL PETITION FOR WRIT OF CERTIORARI

CATHY J. O'CONNOR
626 PROSPECTOR TRAIL
BOZEMAN [NEAR 59718]
MONTANA

Questions Presented

Due Process—No Evidence, No Pleadings

1. Does IRC § 7459(d) allow "no-evidence-required" judgments?

STATUTORY CHALLENGE

2. If so, does IRC § 7459(d) violate Due Process?

Due Process—Tax Court Rules

3. Is Respondent's TCR 121 motion timely?

Equal Protection—Tax Court Rules

4. Do TCRs 54 and 121 restrict petitioners only?

Due Process—Ethics, Sanctions

5. Should GERBER and PANUTHOS have self-recused? If so, is *Liljeberg* satisfied?

6. How do the Tax Court and the 9th Circuit avoid paying O'Connor penalties per § 6673?

Parties

The parties to the court of appeals judgment sought to be reviewed are the following:

Case No. 05-70536

Appellant
Cathy J. O'Connor

Appellee
COMMISSIONER OF INTERNAL REVENUE
(thus SECRETARY OF THE TREASURY ("Secretary"),
and UNITED STATES OF AMERICA)

EILEEN J. O'CONNOR, Assistant AG
KENNETH L. GREENE, DOJ
MICHELLE B. O'CONNOR, DOJ (sole signatory)

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Citations to decisions below

None.

Jurisdiction

(i) Date Judgment Entered
17 January 2006 [+90: 17 April 2006]

(ii) Rehearing, Extension None

(iii) Rule 12.5 Cross-appeal N/A

(iv) Statutes, Jurisdiction
Review by certiorari of decision by court of appeals, 28 U.S.C. §§ 1254(1), 2101(c).

(v) Regarding notice of statutory challenge, Rule 29.4(b)
O'Connor challenged IRC § 7459(d) on appeal, where it first came up, and DOJ received a copy of that Brief/ Notice. Therefore, "28 U.S.C. § 2403(a) may apply;" the initial filing of this petition is served on the Solicitor General; and no other formal notice, outside the normal course of litigation, has been issued.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Key Statutory Language

Tax Court Rules

Rule 30. Pleadings Allowed

There shall be a petition and an answer, and, where required under these Rules, a reply. No other pleading shall be allowed, except that the Court may permit or direct some other responsive pleading. (See Rule 173 as to small tax cases.)
TCR 30.

Rule 34(b)(4) and (5) (Standards for Petitions).

TCR 34(b)(4)—*ASSIGNMENT* OF ***ERROR***	
[The petition in a deficiency or liability action shall contain (see Form 1, Appendix I):]	"Rule 34(b)(4) requires that a petition filed in this Court contain
(4) Clear and concise assignments of each and every ***error*** which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency	clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiencies
or liability.	and the additions to tax and/or penalties in dispute."
The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issue not raised in the	GERBER (26 Oct 2004) (indicates the differences).

assignments of error shall be deemed to be conceded. Each assignment of error shall be separately lettered. TCR 34(b)(4) (emphasis added).	
TCR 34(b)(5)—*ALLEGATION* OF ***FACTS***	
[The petition in a deficiency or liability action shall contain (see Form 1, Appendix I):] (5) Clear and concise lettered statements of the ***facts*** on which the petitioner bases the assignments of error, ***except with respect to those assignments of error as to which the burden of proof is on the Commissioner.*** TCR 34(b)(5) (emphasis added).	"Rule 34(b)(5) further requires that the petition contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error." GERBER (26 Oct 2004) (indicates the differences).

Rule 36. Answer

(b) Form and Content: The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation in the petition; however, if the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, then the Commissioner shall so state, and such statement shall have the effect of a denial. If the Commissioner intends to qualify or to deny only a part of an allegation, then the Commissioner shall specify

so much of it as is true and shall qualify or deny only the remainder. ***In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof on which the Commissioner relies and has the burden of proof.*** Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate. TCR 36(b) (emphasis added).

Rule 37. Reply

(a) Time To Reply or Move: *The petitioner shall have 45 days from the date of service of the* ***answer*** *within which to file a reply, or 30 days from that date within which to move with respect to the* ***answer***. With respect to an amended answer or amendments to the answer the petitioner shall have like periods from the date of service of those papers within which to reply or move in response thereto, except as the Court may otherwise direct. TCR 37(a) (emphasis added).

Rule 40. Defenses and Objections Made By Pleading or Motion

Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may, at the option of the pleader, be made by motion: (a) Lack of jurisdiction, and ***(b)*** *failure to state a claim upon which relief can be granted.* If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, then such party may assert at the trial any defense in law or fact to that claim for relief. ***If, on a motion asserting failure to state a claim on which relief can be granted, matters outside the pleading are to be presented, then the motion shall be treated as one for summary***

judgment *and disposed of as provided in Rule 121, and the parties shall be given an opportunity to present all material made pertinent to a motion under Rule 121.* TCR 40 (emphasis added).

Rule 54. Timely Filing and Joinder of Motions

Motions must be made timely, unless the Court shall permit otherwise. ***Motions shall be separately stated and not joined together***, except that motions may be joined in the following instances: (1) Motions under Rules 51 and 52 directed to the same pleading or other paper; and (2) motions under Rule 56 for the review of a jeopardy assessment and for the review of a jeopardy levy, but only if the assessment and the levy are the subject of the same written statement required by Code section 7429(a)(1). TCR 54 (emphasis added).

Rule 121. Summary Judgment

(a) General: Either party may move, with or without supporting affidavits, for a summary adjudication in the moving party's favor upon all or any part of the legal issues in controversy. ***Such motion may be made at any time commencing 30 days after the pleadings are closed*** but within such time as not to delay the trial. TCR 121(a) (emphasis added).

Contrast the timing language of Rule 56(b).

Rule 56. Summary Judgment
(b) For Defending Party.

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought ***may, at any time, move*** with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.
FED. R. CIV. P. 56(b) (emphasis added).

Internal Revenue Code

Section 7459. Reports and decisions

(d) EFFECT OF DECISION DISMISSING PETITION.—***If*** a petition for a redetermination of a deficiency has been filed by the taxpayer, [***then***] a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary. An order specifying such amount shall be entered in the records of the Tax Court ***unless the Tax Court cannot determine such amount from the record in the proceeding***, *or unless the dismissal is for lack of subject matter jurisdiction.*
IRC § 7459(d) (emphasis added).

Section 6673. Sanctions and costs awarded by courts

(a) Tax court proceedings

(1) Procedures instituted primarily for delay, etc.

Whenever it appears to the Tax Court that

(A) proceedings before it have been instituted or maintained by the taxpayer primarily for delay,

(B) the taxpayer's position in such proceeding is frivolous or groundless, or

(C) the taxpayer unreasonably failed to pursue available administrative remedies,

the Tax Court, in its decision, may require the taxpayer to pay to the United States a penalty not in excess of $25,000.

(2) Counsel's liability for excessive costs

Whenever it appears to the Tax Court that any attorney or other person admitted to practice before the Tax Court has multiplied the proceedings in any case unreasonably and vexatiously, the Tax Court may require

(A) that such attorney or other person pay personally the excess costs, expenses, and attorneys' fees

reasonably incurred because of such conduct, or

(B) if such attorney is appearing on behalf of the Commissioner of Internal Revenue, that the United States pay such excess costs, expenses, and attorneys' fees in the same manner as such an award by a district court.

(b) Proceedings in other courts

(1) Claims under section 7433

Whenever it appears to the court that the taxpayer's position in the proceedings before the court instituted or maintained by such taxpayer under section 7433 is frivolous or groundless, the court may require the taxpayer to pay to the United States a penalty not in excess of $10,000.

(2) Collection of sanctions and costs

In any civil proceeding before any court (other than the Tax Court) which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, any monetary sanctions, penalties, or costs awarded by the court to the United States may be assessed by the Secretary and, upon notice and demand, may be collected in the same manner as a tax.

(3) Sanctions and costs awarded by a court of appeals

In connection with any appeal from a proceeding in the Tax Court or a civil proceeding described in paragraph (2), an order of a United States Court of Appeals or the Supreme Court awarding monetary sanctions, penalties or court costs to the United States may be registered in a district court upon filing a certified copy of such order and shall be enforceable as other district court judgments. Any such sanctions, penalties, or costs may be assessed by the Secretary and, upon notice and demand, may be collected in the same manner as a tax.

26 U.S.C.A. § 6673.

Citations to additional authority

For Tax Court discovery policy, *see also* TCRs 51, 70(a)(1), 90, 91 and 100.

26 U.S.C.A. § 7458 (West 2002) (*taxpayer* read also to mean *petitioner*; otherwise, it presumes facts not proved).

28 U.S.C. § 3002 (2000).

31 U.S.C. §§ 321(d), 5101, 5102, 5103 (2000).
42 U.S.C.A. § 1320b-9(k) (West 2003).

Public Law 105-61, § 641.

Economic Growth and Regulatory Paperwork Reduction Act of 1996, P.L. No. 104-208, § 2609.

Act of October 28, 1977, Pub. L. No. 95-147, § 4(c), 91 Stat. 1227, 1229 (codified as amended at 31 U.S.C. § 5118(d)(2)).

Coinage Act of 1965, Pub. L. No. 89-81, § 211(a), 79 Stat. 254, 257 (July 23).

H.R.J. Res. 192, 73d Cong. (1933) (enacted) (Sess. I, Ch. 48, June 5) (Public Res., No. 10) (48 Stat. 112, 113 (1933)) (formerly codified at 31 U.S.C. § 463) (codified as amended at 31 U.S.C. § 5118(d)(2)).

Statement of the Case

Trial Court Jurisdiction

26 U.S.C.A. § 7442 (68A Stat. 879 (1954)).

Procedurally, someone has to go first

The music is on; the decorations, all up; the food, out; the guests, around the tables. But, until the first couple actually starts, no one wants to take to the dance floor.

Telephones, automobiles, airplanes, computers, stores that sell nothing but fancy coffee. Someone had to go first.

Cognitive dissonance serves a vital procedural, adversarial function

All mechanical and electrical "control systems" work, because the design includes a "negative feedback loop." In society, the "negative feedback loop" is provided, in part, by cognitive dissonance. Those who go first *do* teach the new perspective, but not without fierce and relentless challenge. Change occurs best at a rate absorbable by the marketplace, even when it feels like trying to run through an Olympic-size swimming pool full of molasses.

Permission to (re)think—a procedural condition precedent

Here, the ones who go first don't need anyone else's permission to think. They are endowed by their Creator with certain unalienable Rights (and Duties), one of which is the right (and duty) to think. But, those intent on committing crimes under color as a result of their cognitive dissonance *do* need permission to (re)think.

Pharaoh never really had permission to (re)think. Thirteen times he had highly reliable information, and 13 times he acted from the lie that had become habit.

But, his *advisors* didn't need all 13. In fact, after the first four, i.e., rod-to-serpent (mimicked), water-to-blood (mimicked), swarms of frogs (mimicked, but Pharaoh saw a difference) and dust-to-lice (*not* mimicked), *they* had seen enough. So, feel free to grant permission to (re)think

at the earliest humanly conceivably possible opportunity. Boxing matches wouldn't attract anything like the crowds they do if they weren't scheduled to go 15 rounds. Who wants to pay all that money to see a first-round TKO?

They understand the gold clause issues ...

The 9th Circuit have "gone first" [1] in the revived gold clause issues, and they zeroed right in on it.

So, how ***do*** they (A) understand the gold clause issues so well, where gold is turned on and off like a light switch, *legislatively*, i.e., ***completely*** independently from that language that would otherwise prohibit the mere *thought*, much less actual *existence*, of an "off switch" for Money, while simultaneously (B) understand the "tax" system not at all? This particular dichotomy is ***mind-boggling***. Where specific language serves as no "source of authority" whatsoever for ***the*** "choice of law" issue, how can that very same language serve as a "source of authority" for ***any other*** issue? Cognitive dissonance serves a vital function, but it is not a defense or excuse for crimes committed under color. Ignorance of the law is another one that just won't work for jurists. Insanity, on the other hand, is a perfectly good, recognized defense. But, to go *there*, should the criminally insane remain on the bench?

... just not *evidence* via Verified Petitions

The complicated theories they "get." It's the simple, ancient ones that evade their consciousness.

The 9th Circuit were "unpersuaded" by the law to which they swore an oath. That's almost humorous when contrasted with the Fifth Circuit's scorched-earth policy frontal assault against that same law and oath!

But, how difficult can this *possibly* be? O'Connor submitted a verified petition, traditionally the *proper* way to initiate *any* maritime proceeding. This compelled Respondent either (A) to satisfy its alleged capacity as beneficiary by proving up, under penalty of perjury, the

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[1] Citing the 8th Circuit's insightful study.

ancient threshold burden of proof carried by ***all*** who assert a claim as beneficiary, in particular the agreement O'Connor signed by which she voluntarily assumed a fiduciary capacity with respect to *this* claimant, or (B) to shut up and go away. The only ***evidence*** in this case is in O'Connor's verified petition. According to that ***evidence***, there is no fiduciary obligation. According to that ***evidence***, there is no amount due. According to that ***evidence***, ***<u>everything</u>*** about the "administrative determination" was rendered incompetent, null, void and worthless (not to mention a flagrant violation of mail fraud), and this by at least *two* means: direct assertion of owing zero, and, even more to the point, direct assertion of having no burden of proof ***to*** carry.

Either O'Connor has a fiduciary obligation or she doesn't. According to the never-rebutted ***evidence*** of Record, she doesn't.

However, the Tax Court, acting on the lie that has become habit, in violation of their oath to uphold the "law" of "this state," and in extreme violation of judicial ethics, found facts that are nowhere in ***evidence*** in this Record, committed retaliation, extortion and mail fraud, all under color, ordering her to make a fiduciary's distribution without ***ever*** compelling the alleged beneficiary to prove that it even ***is*** a beneficiary, of anything, much less of something over which O'Connor is a/the fiduciary.

And, the 9th Circuit, acting on the lie that has become habit, has willfully joined in the ongoing conspiracy under color against O'Connor, extorting *more* money from her for her demanding that a case first be ***proved up*** against her, and for her being the only one in this matter, so far, who has argued the law applicable to this case.

Order *what?!* The Tax Court to *follow* their own Rules? to afford *Due Process?* You're joking, right?

Actually, no, and there comes a point in time when one fatigues from the ***need*** to assert such arguments!

No Answer, thus no Counterclaim.

To demonstrate just how cock and bull sure they were that they could run over the law, because it's being argued, in ***their*** view, by a moron pro se from hickville Montana, the Tax Court abandoned even their own Rules.

COMMISSIONER filed no Answer. The glaring absence of any "Standing Pre-trial Order" confirms the lack of joinder of issue. Without an Answer, there is not even the remotest basis to conjure a "Counterclaim," even via misnomer. Where there is no affirmative claim for relief by the alleged beneficiary, thus nothing even *remotely* purporting to satisfy the threshold burden of proof, it's excruciatingly clear that O'Connor was ***never*** even alleged, much less proved, to be a fiduciary. And, without ***evidence*** proving *that* capacity and relationship, O'Connor ***never*** had a duty to *disprove* ***any*** "administrative determination" in the first place! No ***fiduciary's*** burden of proof ever arose, because no ***beneficiary*** ever carried its *threshold* burden of proof.

No affirmative claim for relief filed, but summary judgment for such is filed/granted, anyway.

Despite TCR 54, COMMISSIONER filed improperly joined motion**S** of TCR 40(b) (dismiss—failure to state a claim) and 121 (summary judgment). Summary judgment was not for a *defense*; rather, for *affirmative relief*. Thus, there is (A) ***no pleading*** on which to base such motion, (B) ***no evidence*** in support of such motion, (C) certainly ***no*** evidence of any ***fiduciary obligation*** on O'Connor's part, thus, generally, (D) about as Due-Process-defying a handling of the matter as can be found.

Further, TCR 121 is specifically limited by a threshold time marker: "***Such motion may be made at any time commencing 30 days after the pleadings are closed[.]***" TCR 121(a) (emphasis added). Where there is no Answer, the pleadings are *not* closed. Where there is no Counterclaim, the pleadings are *not* closed. And, for COMMISSIONER to seek summary judgment requesting

affirmative relief based on no pleading, at all, is patently absurd on its face! So, there *is no* responsive pleading, but there *is* a motion to dismiss (the petition), improperly joined with a summary judgment motion, seeking ***affirmative*** relief on a claim never pled ***or*** proved!

Sec. 7459(d) is not some kind of mystical elixir.

Nothing about § 7459(d) supplies pleadings ***or*** evidence. All § 7459(d) suggests is that IF the Record *contains* ***pleadings***, and IF the Record *contains* ***evidence*** *favorable* to such judgment, such may be used to *support* a judgment. ***Nothing*** about § 7459(d) allows ignoring the ***evidence*** that is of Record. Thus, ***nothing*** about § 7459(d) authorizes ignoring O'Connor's verified petition. And, to repeat, ***nothing*** about § 7459(d) supplies ***evidence***, affirmative ***or*** rebuttal.

Also key to § 7459(d) is its clear condition precedent: "taxpayer." Since this critical term was ***never*** supported by ***evidence*** of Record, § 7459(d) never even applied!

When does the criminal Record-tampering stop?!

This Court bent over backwards with diplomacy in *Ballard*. Here, the Tax Court struck O'Connor's Motion to Strike via "secret order," i.e., without any Notice or justification of any type, kind or nature. The Tax Court simply strike whatever, willy nilly, apparently because not one of them has gone to jail for it, yet. And, where the appellate courts refuse to correct it, maybe they should join the Tax Court in the federal recreational unit.

"Ve Vill Naught Argue Zee Law Een Dis Kort!! You're liable! No, they don't have to prove it, or even plead it, and no, you don't even get discovery!"

The Tax Court not only struck her motion to strike, not only denied her motion for judgment on the pleadings, not only denied her motion for default judgment, not only ordered, *sua sponte*, discovery without any "joinder of issue" anywhere in sight, *see* TCR 70(a)(2), not only set an in-person hearing, in DC, for a Montana case, on a pleadings issue motion, but also granted, and the 9th

Circuit affirmed, without *one shred* of ***evidence***, summary judgment based not only on a motion filed too early, per the Tax Court's very own Rules, but also on a claim for affirmative relief never even pled. Of course, pleadings may be conformed to the ***evidence***; however, where there are no pleadings ***to*** conform, and where there is ***no evidence***, from ***no trial***, there are still ***no pleadings!***

The law is "unpersuasive" to the 9th Circuit ...

As manifestly simple as O'Connor's position is, substantively *and* procedurally, and as ***manifestly criminal*** the Tax Court's conduct, the 9th Circuit find all this "unpersuasive." To be "unpersuaded" is to assert a rather "laid back" response to it all. The 9th Circuit must hear a ***lot*** of "first impression" ideas. "Laid back" is good. One can work with "unpersuaded." This beats the daylights out of the Fifth Circuit's knee-jerk activated, nuclear-powered flamethrower!

But, then they added "sanctions." Retaliatory extortion is bad. By sanctioning those who dare to argue the law, they ***promote*** the criminality. Why *do* we even bother with 90-day letters? Why not just go ***straight*** to administratively drafted, *ex parte*, non-appealable summary judgment "orders?!" What would be different? The alleged beneficiary's threshold burden of proof would be just as unproved; the lack of ***evidence***, just as egregious; Due Process, just as butchered.

Just because "no one" since Pollock has argued the law on which this scam is based hardly means that trust law has changed. And, it's not O'Connor's problem that all these attorneys and "judges" have based their entire "tax" careers on a scam and a lie. Yes, it's a ***wicked*** paradigm shift, but retaliation and extortion under color ***will not*** become public policy in "this state."

The law that allows prevention is the exact same law that provides the cure. Prevention, however, is much more cost effective, for all involved.

... but the law *has* "persuaded" the Tax Court.

Toward that end, the Tax Court are already making changes. Congratulations, again, to Judge FOLEY, who "went first," and, by silence, denied the improperly joined motion**S** in the Wallis case (recently appealed to the Fifth Circuit), thereby reconfirming (1) that the law of "this state" is neither frivolous nor groundless, (2) that those who competently argue the law of "this state" are not subject to "sanctions" for doing so, and maybe even (3) TCR 54 ***does*** apply equally. While discovery was completely denied, and the Record criminally tampered with, we have to start somewhere. Even the maniacal, Due-Process-butchering, criminal-Record-tampering VASQUEZ, who ordered Florance to respond to the SECRETARY's ***declaration of war*** against him, and who (with WOLFE, apparently no longer with the Tax Court) criminally tampered with those Records, by "unfiling" some ***54 documents***, including 10 "secret orders," thus, who belongs in jail, may be renouncing. It's been several ***months*** since the Fifth Circuit granted ***DOJ's*** motion to remand VASQUEZ's "judgment," on the grounds of alleged clerical error. How long ***does*** it take to change one figure in a one-page "judgment?"

Argument

Remedies Requested

Vacate.

There being no lawful trial "judgment" ***to*** Affirm, the "judgment" on appeal is properly vacated. Respondent never proved its standing and has disclaimed (by vituperating O'Connor). The TCRs apply only to Respondent's benefit; the "judgment" defies the only ***evidence*** of Record; and the judicial lawlessness has triggered *Liljeberg*, rendering GERBER without authority to participate, at all; his "judgment" is facially void.

Enter "[illegible]ke nothing" judgment.

Respon[illegible]ent never pled, and what Respondent did file,

namely improperly joined, untimely and incompetent motion**S**, are properly struck. Thus, either default judgment, or judgment on the pleadings, that COMMISSIONER take nothing, should be entered.

IRC § 6673 Penalties.

The *courts* owe O'Connor § 6673 penalties.

Discussion

Due Process—No Evidence, No Pleadings

1. Does IRC § 7459(d) allow "no-evidence-required" judgments?

No judgment stands without evidence.

Cf. FED. R. APP. P. 10(b)(2). *See, generally,* IRC § 7458; *Miller*, 654 F.2d at 521; and *Boddie*. Unless we're up to throwing Due Process out, altogether, ***no*** statute may ***ever*** allow a judgment to stand without evidence.

IRC § 7459(d) has *two* sentences, not just one.

Per common sense and ancient reasoning, or where that fails, per the *second* sentence of § 7459(d), the Record ***must*** contain evidence supporting the final judgment. The first sentence does not negate the second, *or* Due Process, *or* trust law, *or* the Rules of Civil Procedure.

Where's the evidence *supporting* the "judgment?"

The only evidence of Record is found in O'Connor's verified petition. *O'Connor* (unrebutted evidence is accepted as true). ***Nothing*** about the verified petition ***supports*** the Tax Court's "judgment."

Burden of proof—It rests *first* on the *beneficiary*.

The appellate court would have us believe that O'Connor didn't object to the determination. Not only (A) is this flat out ethically sanctionable, for O'Connor most certainly did object to the determination, by asserting at least (1) an amount due of zero (certainly ***more than adequate*** for notice pleading) and, even more to the point, (2) no fiduciary obligation at all, by declaration under perjury, but also (B) this warped perspective ***still***

presumes facts not in evidence. Unless and until the alleged beneficiary satisfies its ***threshold*** burden of proof, O'Connor has no burden *to disprove* squat.

See Pollock I, 157 U.S. at 553-54; TCRs 34(b)(4), 36; *White Mountain Apache*, 249 F.3d at 1370-71 (Tribe claimed breach of fiduciary duty; "United States" moved, per 12(b)(6), to dismiss; granted by trial court; reversed on appeal); *FDIC v. Barton*, 104 F.3d at 701-02; *Conkling*; *C&B Sales*; BOGERT § 50 at 102, § 871 at 156 and nn.2, 3 (where beneficiary fails to prove damages, there is no recovery). *See also Vu* (earthquake case, quasi-fiduciary obligation estops limitations defense); *Stanford Univ. Hosp.*, 174 F.3d at 1084, applying *Bartoni-Corsi Produce, Inc*, 130 F.3d at 862 (*O'Melvany* liability rule applies only to fiduciaries). *See also* IRC § 6020(b) (the numerics submitted are not even subscribed); *Crawford* (where there is no evidence even offered, O'Connor is deprived her right to cross-examine); *O'Connor* (unrebutted evidence is accepted as true); *Assoc'd Gen. Contractors*, 508 U.S. at 668-69 (unrebutted allegations accepted as true); BOGERT § 50, at 108, § 170, at 205, 207 (Proof of Acceptance or Disclaimer), § 172, at 227-28 (nunc pro tunc consequences of vilifying O'Connor for her demanding ***evidence***, Due Process, Equal Protection, etc.).

Where are the pleadings?

And, for a court to award *affirmative* relief, at all, not only must there be evidence, but also there must first be pleadings asserting such claim. *See* FED. R. CIV. P. 13 (compels counterclaims), 15 (trial of issue works de facto nunc pro tunc amendment of pleadings); *Boy Scouts of Am.* (tragic case; Jones Act discussion made possible by amendment of pleadings which added the affirmative claim(s)); BOGERT §§ 170-72 (disclaimer and its effect); TCRs 30 (prohibits counterclaims), 36 (requires counterclaim via misnomer), 37 (Reply allowed/required for required misnomer counterclaim via Answer); *Dishman* (claims and defenses are *very* different); and

Janis, 428 U.S. at 438 n.5. (in *federal* court, counterclaims used to be standard operating procedure). And, *this* judgment finds neither pleadings *nor* evidence in support!

Conclusion—No evidence *supports* the "judgment."

Nothing about § 7459(d) allows a "no-evidence-required" judgment. Thus, nothing about § 7459(d) allows a "no-pleading-required" judgment, either.

But, based on (1) no affirmative claim for relief, (2) no evidence and (3) motion**S** that are frivolous, improperly joined and untimely, GERBER entered judgment *for Respondent*, and the 9th Circuit refused to correct this.

STATUTORY CHALLENGE

2. If so, does IRC § 7459(d) violate Due Process?

Due Process compels evidence.

It's legally impossible for ***any*** judgment to stand without evidence. ***Any*** statute that purports to suggest otherwise violates Due Process and is void on its face.

The problem is not ~~with~~ § 7459(d).

The problem is that the Tax Court and the 9th Circuit sanctionably pervert and corrupt it. The Tax Court read what they want and then just stop reading. They do this with TCR 34(b)(4) and (5), and they do this with § 7459(d). There is more to TCR 34(b)(4) and (5) than they understand, and § 7459(d) has *two* sentences, not just one. The 9th Circuit suffer from the same blindness.

On the one hand, to ruin a perfectly legitimate statute, find some abusive way to implement it. *Accord Yick Wo* (race-neutral statute enforced by unequal policy (against Chinese) violates Equal Protection). But, on the other, a questionable statute may be construed consistently with the policy of "this state." Thus, if the *Tax Court and 9th Circuit* read § 7459(d) properly, then it's void on its face. If *O'Connor* reads it properly, then the statute is fine, and the Tax Court and 9th Circuit should be censured and sanctioned, if not also jailed.

Due Process—Tax Court Rules

3. Is Respondent's TCR 121 motion timely?

The rules *they* wrote!

TCR 121 specifically ***prohibits*** even the *filing* of summary judgment motions until "***30 days after the pleadings are closed[.]***" TCR 121 (emphasis added). Pleadings are not closed until there's at least an Answer, and maybe not until there's a Reply. *See* TCRs 30, 36, 37.

Respondent never pled.

Since Respondent never Answered, not only were the pleadings not closed at the time Respondent filed its improperly joined motion***S***, but also there most certainly was no expiration of ***30 days after*** such closure!

Equal Protection—Tax Court Rules

4. Do TCRs 54 and 121 restrict petitioners only?

Equal Protection Violations.

As simply a list of examples, the following areas have Equal Protection standards:

(1) racial bias, e.g., *Johnson* (racial bias in prison segregation policy);

Grutter (law school admissions policy, "reverse discrimination");

Hopwood (law school admissions policy, "reverse discrimination");

Miller v. Johnson (race-based gerrymandering of congressional districts);

Adarand Constructors, Inc. (race-bias in government contracting);

Powers (citing *Batson*) (racial bias in preemptory strikes in jury selection);

Bakke (medical school admissions policy, "reverse discrimination");

Jones v. Mayer Co. (fair housing policy);

Loving v. Virginia (state antimiscegenation statute);

Bolling v. Sharpe (public school segregation);

Brown v. Board of Education of Topeka (disallowed statutory segregation for public facilities);

Hernandez v. Texas (regarding racial bias in preemptory strikes in jury selection);

Shelley v. Kraemer (restrictive covenants, fair housing policy);

Plessy v. Ferguson (allowed statutory segregation on railway cars);

Yick Wo (race-neutral statute enforced by unequal policy (against Chinese) violates Equal Protection);

Strauder (excluding blacks from the jury);

Dred Scott (race and citizenship);

(2) gender bias, e.g., *United States v. Virginia* (VMI's all-male admissions policy);

J.E.B. v. Alabama ex rel. T. B. (gender bias in preemptory strikes in jury selection);

(3) age bias, e.g., *Gregory*) (state judge retirement age);

(4) sexual orientation bias, e.g., *Romer v. Evans* (striking down Colorado's Amendment 2 referendum);

Lawrence v. Texas (striking down Texas' sodomy law);

Nabozny (failure to prevent orientation-based harassment in public schools);

(5) campaign finance bias, e.g., *McConnell* (political parties *vis-à-vis* special interest groups, "soft money" v. "hard money" campaign financing regulations);

(6) right to die, e.g., *Vacco* (assisted suicide statutes);

(7) state taxation, e.g., *Gen. Motors Corp., v. Tracy* (in-state and out-of-state differential rate differences);

Nordlinger v. Hahn ("acquisition value" basis for real estate taxation system);

San Antonio Indep. Sch. Dist. v. Rodriguez (funding of public school system);

(8) mental "commitment," e.g., *Heller v. Doe* (evidentiary standard differences);

(9) evidence gathering, e.g., *Ferguson v. City of*

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Charleston (non-consensual blood testing of suspected drug-addict pregnant women);

(10) commercial bias, e.g., *Carolene Products Co.* (health-based restriction on commerce);

(11) malapportionment, e.g., *Reynolds v. Sims*; *Baker v. Carr*;

(12) immigration policy, e.g., *Francis v. INS* (noncitizen penalized based upon the chance timing of departure from the United States); and

(13) irrational governmental action, e.g., *Village of Willowbrook v. Olech* ("class of one" fully recognized where intentional, irrational, reproducible governmental action is involved).

Irrational, intentional governmental action.

The irrational, intentional governmental action theory applies, and O'Connor is a "class of one." If she's not a "class of one," it's because she's a member of the class of *pro se* Tax Court petitioners who ***demand*** that the alleged beneficiary (A) satisfy its threshold burden of proof, or (B) shut up and go away. To date, neither has occurred. Whether O'Connor was singled out or is a member of a larger class, which class is criminally abused under color, in violation of the law of "this state," Due Process and Equal Protection, to list the highlights, O'Connor's "injury in fact" is the same. Per *both* the Tax Court *and* 9th Circuit, TCR 54 restricted *Respondent's* improperly joined motion**S** not at all!

Where Tello (5th), Florance (5th), Stearman (5th), Wallis (5th) and O'Connor (9th), have compelled the Tax Court to follow the law, the Tax Court's initial response, 100% of the time, was pure, unmitigated, retaliatory lawlessness. So far, FOLEY, alone, in the Wallis case, has opted to go back to the law library. FOLEY, alone, has renounced, but there may still be hope for VASQUEZ.

The rest of the Tax Court and the appellate courts perpetuate their lawless, vicious, extortionate attack, under color, against the law and those who argue it.

Conclusion—Two-way street or no street.

TCRs 54 and 121 restrict equally or not at all. Respondent filed improperly joined motion**S**, but TCR 54 doesn't limit Respondent; only O'Connor. The TCR 40 motion is sanctionably incompetent on its face, and the 121 motion, in addition to being facially incompetent, was just as facially ***too early***. But TCR 121 doesn't limit Respondent; only O'Connor.

Thus, GERBER not only *did not* strike ("unfile") those motion**S** (because petitioners alone are subject to having documents struck, not Respondent), but also *did* set the motion**S** (on the *pleadings*) for in-person *hearing*, ***in Washington, D.C.***, while simultaneously ordering O'Connor to produce *discovery* (facts "with specificity"), under the disguise of ordering correction to a verified petition that needed no correcting. [2] This wholly biased, intentional, irrational action by GERBER violates TCRs 40, 54 and 121, as well as Due Process, Equal Protection and a host of criminal statutes, state and federal. And, this is what happens when the law is not applied equally, i.e., when the "judges" become *parties* to the case.

Epilog—Part 1.

Since TCR 54 doesn't restrict Respondent, it doesn't restrict O'Connor, and the motions that GERBER and PANUTHOS struck are properly restored to the Record.

Epilog—Part 2.

If TCR 54 does restrict Respondent, then Respondent's non-first motion**S** are properly struck. Further, since there is no responsive pleading, O'Connor's motion for default judgment should be granted.

Epilog—Part 3.

Since Respondent rebutted no evidence, O'Connor's motion for judgment on the pleadings should be granted.

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[2] What GERBER really set for a hearing was his own TCR 52 motion, which is actually a *discovery* order, which, like the TCR 121 motion, is too early, and for virtually the same reason. *See* Point 18.

Epilog—Part 4.

Regarding "too early," GERBER is also "too early!" To look *again* at the rules *they* wrote, discovery ***can't start*** until 30 days *after* "joinder of issue."

> (2) *Time for Discovery:* Discovery shall not be commenced, without leave of Court, before the expiration of 30 days ***after joinder of issue*** (see Rule 38).

TCR 70(a)(2) (emphasis added).

"Joinder of issue" doesn't happen without an Answer, Since Respondent never Answered, GERBER's ***discovery*** "order" facially and defiantly violates TCR 70(a)(2), as well as Due Process and Equal Protection.

Due Process—Ethics, Sanctions

5. Should GERBER have self-recused? If so, is *Liljeberg* satisfied?

GERBER should have self-recused.

No one is lawfully compelled to trial in a kangaroo court. 28 U.S.C.A. § 455(a). GERBER proclaimed his bias and his proclivity toward lawlessness in these ways:

- He struck, without "order" or any other form of Notice, O'Connor's motion to strike.
- He failed to strike, instantly and *sua sponte*, *Respondent's* improperly joined motion***S***, filed in repugnant defiance of TCR 54. But, *O'Connor's* joined motion***S***, were struck, by both GERBER and PANUTHOS.
- He failed to deny, instantly, *Respondent's* untimely (too early) TCR 40/121 motion, filed in repugnant defiance of TCR 121, which prohibits even the *filing* of such motion until 30 days after the pleadings close, which doesn't happen without an Answer, and Respondent never Answered.
- He issued his own TCR 52 motion/"order" against O'Connor's perfectly acceptable verified petition, in

repugnant defiance of TCR 34(b)(4) and (5).

- The TCR 52 motion/"order" he issued is, in reality, a ***discovery*** order, requiring presentation of facts "with specificity," in defiance of the policy of "notice pleading," which O'Connor had more than satisfied.
- The TCR 52 motion/"order" he issued also repugnantly defies TCR 70(a)(2), in that ***discovery*** doesn't even ***start*** until 30 days after "joinder of issue." "Joinder" most certainly doesn't happen without an Answer, which Respondent never filed.
- ***For a Montana case***, he set, in repugnant defiance of TCRs 34(b)(4), (5), 36, 37, 40, 52, 54, 70(a)(2) and 121, his TCR 52 motion/"order," which regards a ***pleadings issue,*** for an ***in-person hearing, in Washington, D.C.***
- He denied O'Connor's motions for default judgment and for judgment on the pleadings, even though Respondent's frivolous motions are properly struck *sua sponte*, and Respondent never rebutted O'Connnor's verified petition.
- He has so defied his oath of office, the ancient law of this state, "his own" rules, Due Process and Equal Protection as to multiply vexatiously and with scienter this litigation.

Liljeberg is satisfied.

A reasonably objective person can conclude that any "judge" who violates "his own" rules, Due Process and Equal Protection, and then ***sanctions*** litigants who assert the very *same* law to which that "judge" swore an oath, is sufficiently partial to be disqualified from that case. Where recusal should have happened, but didn't, the decision to vacate analyzes these three factors:

- "the risk of injustice to the parties in the particular case[;]"
- "the risk that the denial of relief will produce injustice in other cases[;] and"

- "the risk of undermining the public's confidence in the judicial process."

Liljeberg, 486 U.S. at 864.

RISK OF INJUSTICE TO O'CONNOR.

The risk of injustice is high to ***any*** party where the "judge" bends over backwards to defy all law in sight in order to rule against that party. To ***sanction*** a party for arguing the law is to defy, sanctionably, judicial ethics considerations, and to introduce still another body of law. Where any "judge" characterizes the law, itself, as "*frivolous and groundless*," risk of injustice screams from the page.

RISK OF INJUSTICE IN OTHER CASES.

Injustice in other cases via this exact same approach has already occurred. Further, where a "judge" ***sanctions*** a party ***for arguing the law***, it's ***impossible*** for that not to affect other cases, as is already proved.

RISK OF UNDERMINING PUBLIC CONFIDENCE IN JUDICIAL PROCESS.

O'Connor expects that few things are more horrific to the American people than "judges" who are so biased and malicious that they overtly violate their court's very own rules, slander the law, generally, by sanctioning those who argue the law, and defy Due Process and Equal protection openly ("Stop us if you think you can!"). There may even be a group of U.S. citizens who would find such "judges" horrific. How this might apply to the Tax Court, in which a "no confidence" perception prevails mightily is a good question. But, *Liljeberg* does not "grandfather in" habitual abuses as exceptions or defenses.

Conclusion.

GERBER should have self-recused, and didn't. The *Liljeberg* standard is more than satisfied. The "final judgment" is properly vacated.

6. How do the Tax Court and the 9th Circuit avoid paying O'Connor penalties per § 6673?

Pro Se's, the excluded class of litigants.

What's good for the goose is good for the gander.

WHO—ALL BAD ACTORS.

Train car loads of "penalties" exist to "correct" the "wayward" "taxpayer." Virtually nothing exists to correct systemic abuse by the Secretary, *see* IRC § 7430, and even less exists to correct systemic abuse by the trial and appellate courts. The "remedies" that *do* exist are connected with "attorneys fees," *see, e.g.*, § 6673(a)(2)(B), leaving the entire class of *pro se* litigants without an effective remedy, and that in a dispute-resolution system *designed entirely around the pro se litigant*. On its own, the Equal Protection problem manifestly declares itself.

It is impossible to conceive that congressional policy would be (A) to *create* a biased forum, in whole, much less in part by deliberately singling out an entire class of litigants, the *pro se*'s, for special, Due-Process-defying. treatment, much less (B) to deny sanctions, *especially* in the face of irrational, intentional, reproducible, unequal governmental action and conduct. Therefore, it follows that the congressional policy is to penalize the *conduct* proscribed, *including* that conduct where a "jurist" is the principal. *Cf.* § 6673(a)(2) ("any attorney or other person admitted to practice law before the Tax Court").

WHAT—ALL VEXATIOUS MULTIPLICATION OF PROCEEDINGS.

The conduct at issue is vexatious multiplication of the proceedings. *Cf.* 28 U.S.C. § 1927. Lawless (defiance of the law under color can be viewed no other way) judicial activity vexatiously multiples the proceedings, thereby bringing such activity within § 6673. We're ***way*** beyond "debatable" on these issues. The judicial "officers" are not simply errant, or simply abusing reasoned discretion. Despite ***all*** of O'Connor's good faith, due diligence ***and***

full disclosure, they are flat out victimizing O'Connor, in defiance of every applicable procedural and substantive law in sight. This tends to reinforce O'Connor's reading of § 6673, namely that it limits only a *"taxpayer's"* upper limit to $25,000, not the Secretary's, not DOJ's, and not any "jurist's," regarding which upper limit § 6673 is silent. For them, the penalty is competently limited by "punishment that fits the conduct."

Equalize the playing field.

If O'Connor is subject to a financial hammer for being "frivolous and groundless," then how do the criminally extortionate "jurists" avoid that same hammer? Where economic/financial measures are found suitable to bring the (falsely) *accused* into awareness of the law, are such measures not just as suitable to bring the *lawless court* into awareness? Where the ABA-approved curriculums, and licensing exam programs, and the CLE programs *and* the trial and appellate courts, compel the *pro se* to supplement this Court's continuing legal education program, those CLE hours are not "free of charge," for they are not sponsored by any bar association.

GERBER, *and* the 9th Circuit panel, have ***all*** vexatiously and unreasonably multiplied these proceedings. In addition to a "tax" bill of $0, O'Connor is entitled to § 6673 penalties from GERBER, and from the 9th Circuit, in the amount of the total amount "ordered" due, plus interest, *plus* a minimum of $25,000 per level of litigation (this is the third level) whether individually, or jointly and severally with each "bad actor," including UNITED STATES OF AMERICA.

Hoisted by their own petard!

Once again, let's hear *their* very own words, *their* standard of review. "Sanctions are appropriate when the result of an appeal is obvious and the arguments of error are wholly without merit." *Grimes*, 806 F.2d at 1453. The result of both trial and appeal ***is*** obvious, and *their* "arguments of error are wholly without merit."

Conclusion.

Both the present legislative policies and their horrifically biased application violate Equal Protection. There are no penalty provisions protecting *pro se*'s who are victimized by "frivolous and groundless" "jurists." However, § 6673 does apply for "tax" cases. Lawlessness stops when that's more expensive than following the law.

Conclusion

The criminal lawlessness under color has to end.

COMMISSIONER is used to huffing and puffing and blowing down houses built on sand, but, just like the big bad wolf, COMMISSIONER has no ability to blow down houses built on granite. No number of crimes (under color) or conspirators changes the ancient law of trusts.

No evidence; no pleadings?—No "judgment!"

The only pleading and the only evidence of Record is O'Connor's verified petition. COMMISSIONER never proved itself a beneficiary, or an agent of such, or that O'Connor was a fiduciary, or that there was any remote relationship between COMMISSIONER and O'Connor. ***Nothing*** about § 7459(d) supplies either pleadings ***or*** evidence. The COMMISSIONER, its counsel, the Tax Court, DOJ and the 9th Circuit simply flat out committed extortion.

Threshold burden of proof not satisfied.

Where COMMISSIONER never even *alleged*, much less *satisfied*, its threshold burden of proof, it's the height of extortionate absurdity to burden *O'Connor* with disproving a claim that never existed of Record. It's all the more egregious given O'Connor's sworn denial of any such obligation was never rebutted, not even by allegation, much less by sworn statement.

Improperly joined motion***S*** should be struck.

COMMISSIONER's incompetent, sanctionable and improperly joined motion***S*** are properly struck *sua sponte*,

for violation of TCR 54.

Untimely motion should never have been filed.

COMMISSIONER's improperly joined TCR 121 motion should never have been allowed filed. The pleadings were never closed, thus, the 30-day wait period never started.

Due Process and Equal Protection will prevail.

Judgment on the pleadings is proper. Default judgment is proper. Retaliatory, lawless extortion against those who demand that the law be followed is not.

Void "judgment;" no evidence, no pleadings—Direct Conflict with Federal Standards.

The 9th Circuit have upheld the Tax Court's no-pleading-required, no-evidence-required, TCRs-don't-matter, Due-Process-doesn't-matter, Equal-Protection-doesn't-matter "judgment." The Tax Court's manifest deviation from the law, inexorably intertwined with the flagrant violation of oath to uphold the law of this state, is only amplified by its ad-hominem-laced attitude, perspective and demeanor against *pro se*'s, especially those who demand *evidence and* application of *the law*. The trial and appellate "jurists' " ethically sanctionable departure into law-defying rulings, supported by extortionate "sanctions" awards, conflicts with (1) the truth, (2) the ancient Common Law and additional foundational law of this state, (3) longstanding federal statutory provisions, (4) relevant decisions of this Court, and (5) relevant decisions of other courts of appeals.

Thus, the 9th Circuit have (A) engaged in ethically sanctionable conduct, (B) entered an opinion that conflicts with the very foundation of this state, generally, and the "tax" system, in particular, (C) entered an opinion that overtly and egregiously conflicts with relevant decisions of this Court, as well as with relevant decisions of other courts of appeals, and even their own, and (D) so far departed from the accepted and usual course of judicial proceedings, and has sanctioned (i.e., encouraged) the

same departure by the Tax Court, as to call for the exercise of this Court's supervisory power.

Statutorily-justified no-evidence-required "judgments"—Important Question of Federal Law.

Whether IRC § 7459(d) allows a no-evidence-required "judgment," or a "judgment" that manifestly goes against the ***only*** evidence, thus openly violates Due Process, is an important question of federal law that has not been, but should be, decided by this Court.

Overtly biased application of TCRs 54, 121—Important Questions of Federal Law.

Whether TCRs 54 and 121 restrict petitioners only are important questions of federal law that have not been, but should be, decided by this Court.

Refusal to self-recuse—Direct Conflict With Federal Standards.

By supporting, and refusing to correct, the *plethora* of errant judicial activity and rulings by both GERBER and PANUTHOS, thus by not applying § 455(a) to GERBER and to PANUTHOS, thus by not applying *Liljeberg*, thereby overtly *approving* the GERBER/PANUTHOS kangaroo court, the 9th Circuit have (1) entered an opinion that conflicts with relevant decisions of this Court and with relevant decisions of other courts of appeals, and even their own, and (2) so far departed from the accepted and usual course of judicial proceedings, and have sanctioned (manifestly encouraged) the same departure by the Tax Court, as to call for the exercise of this Court's supervisory power.

Trial or appellate jurist liable to party per § 6673—Important Question of Federal Law.

And, whether federal trial and appellate "jurists" are liable under IRC § 6673 to litigants for judicially-spawned vexatious multiplication of "tax" proceedings is an important question of federal law that has not been, but should be, decided by this Court.

Remedies Requested

O'Connor requests

1. That this Court grant the petition, issue the writ of certiorari and take jurisdiction of this matter.
2. That the "judgment" on appeal be vacated; ultimately, that the trial court "judgment" be vacated; that Respondent's motion**S** be struck, and that default judgment or judgment on the pleadings be entered for O'Connor, that Respondent take nothing.
3. A declaration that TCRs 54 and 121 restrict both sides equally or apply not at all.
4. A declaration that IRC § 7459(d) does not allow any no-evidence-required "judgments," or any "judgments" that defy the ***only*** evidence of Record.
5. A ruling that GERBER and PANUTHOS should have self-recused, and that per *Liljeberg* the "judgment" is vacated, or, better, reversed.
6. IRC § 6673 penalties in her favor, *from the courts.*
7. The opportunity to brief any additional issues the Court identifies for such.
8. The non-argument calendar. Oral argument is not expected to aid the resolution of these issues.
9. That costs be taxed to the Tax Court and 9th Circuit. And,
10. Any and all other relief at law, in equity or sui generis to which she may show herself justly entitled.

Respectfully submitted,

Cathy J. O'Connor
Without prejudice
626 Prospector Trail
Bozeman, Montana [near 59718]

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Rule 14.1(i)(i)—Appellate Judgment

2006 Jan 17

FILED

Jan 17, 2006

CATHY A. CATTERSON CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY J. O'CONNOR, Petitioner – Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent – Appellee.	No. 05-70536 Tax Ct. No. 13596-04 MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted January 9, 2006**

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Cathy J. O'Connor appeals pro se from the Tax Court's decision dismissing for failure to state a claim her petition challenging the Commissioner of Internal Revenue's ("Commissioner") notice of deficiency for tax year 2002. We have jurisdiction pursuant to 26 U.S.C. § 7482. We

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

review de novo a Tax Court's [⊥ 2] dismissal for failure to state a claim, *Grimes v. Comm 'r*, 806 F.2d 1451, 1453 (9th Cir. 1986) (per curiam), and we affirm.

The Tax Court properly dismissed O'Connor's petition for failure to state a claim because she did not set forth a clear and concise assignment of error or any facts demonstrating error in the Commissioner's determinations. See Tax Ct. R. 34(b)(4); *Grimes*, 806 F.2d at 1453-54. Moreover, the Tax Court ordered O'Connor to file an amended petition clearly setting forth the errors alleged, and she failed to do so.

O'Connor's remaining contentions are unpersuasive.

We grant the Commissioner's motion for sanctions in the amount of $3,000. *See Grimes*, 806 F.2d at 1454 ("Sanctions are appropriate when the result of an appeal is obvious and the arguments of error are wholly without merit.").

AFFIRMED WITH SANCTIONS.

Rule 14.1(i)(ii)—Additional Orders

No additional Orders on appeal.

Rule 14.1(i)(iii)—Rehearing

No rehearing sought or granted.

Rule 14.1(i)(iv)—Judgment of different date

No judgment of date different from the opinion.

Rule 14.1(i)(v)—Statutes and Rules

See language included in the petition.

Rule 14.1(i)(vi)—Additional Essential Materials

This Record is rather short. Nothing else is included here.

(2)

Supreme Court, U.S.
FILED
05148 2006
OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

Cathy J. O'Connor,
Plaintiff-Appellant-Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee-Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUPPLEMENT TO APPENDIX A FOR THE ORIGINAL PETITION FOR WRIT OF CERTIORARI

CATHY J. O'CONNOR
626 PROSPECTOR TRAIL
BOZEMAN [NEAR 59718]
MONTANA

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Tax Court Final Judgment

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CATHY J. O'CONNOR,	)	
Petitioner,	)	
v.	)	Docket No. 13596-04.
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent.	)	

ORDER OF DISMISSAL AND DECISION

On June 8, 2004, respondent issued a notice of deficiency to petitioner determining a deficiency in and additions to her Federal income tax for 2002. (Section references are to the Internal Revenue Code, as amended, and Rule references are to the Tax Court Rules of Practice and Procedure.) Respondent determined that petitioner failed to report dividends and gains from stock sales and a real estate sale.

Petitioner filed with the Court a timely petition for redetermination contesting the above-referenced notice of deficiency. The petition includes allegations that: (1) The Secretary is not authorized to render accounting or legal advice in the State of Montana; [1] (2) petitioner has no "fiduciary obligation" to the Secretary or the IRS; and (3)

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[1] **[N.B. Not "State of Montana;" rather "this state." Is it a Due Process (vagueness) problem, systemically, where even the jurists have no idea "where" they are? CJO]**

petitioner has no legal obligation to report her tax liability to the IRS. At the time the petition was filed, petitioner resided in Bozeman, Montana. [2]

Respondent filed a Motion to Dismiss For Failure to State a Claim Upon Which Relief Can be Granted. By Order dated September 15, 2004, petitioner was directed to file a proper amended petition setting forth with specificity each error allegedly made by respondent in the determination of the deficiency and separate statements of every fact upon which the assignments of error are based.

Petitioner failed to file a proper amended petition. However, petitioner filed a Report, a Response, and a Motion for Default Judgment (which was denied), and lodged an Objection. Petitioner's various submissions contain nothing but frivolous and groundless arguments.

This matter was called for hearing at the Court's motions session held in Washington, D.C., on October 20, 2004. Counsel for respondent appeared at the hearing and presented argument in support of respondent's motion to dismiss. [3] No appearance was entered by or on behalf of petitioner at the hearing.

Rule 34(b)(4) requires that a petition filed in this Court contain clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiencies and the additions to tax and/or penalties

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[2] **[N.B. O'Connor asserted non-territorial inhabitance and domicile throughout. CJO]**

[3] [n.1 in the original.] During the hearing, counsel for respondent conceded that the amount of the addition to tax under sec. 6651(a)(1) listed on the cover page of the notice of deficiency was overstated inasmuch as it also included an amount for an addition to tax under sec. 6651(a)(2). Respondent conceded that petitioner is not liable for the latter addition to tax far 2002. The correct amount of the addition to tax under sec. 6651(a)(1) is $39,878.88.

in dispute. Rule 34(b)(5) further requires that the petition contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error. See Jarvis v Commissioner, 78 T.C. 646, 658 (1982).

The petition filed in this case does not satisfy the requirements of Rule 34(b)(4) and (5). There is neither assignment of error nor allegation of fact in support of any justiciable claim. Rather, the petition contains nothing but frivolous and groundless arguments. Under the circumstances, we see no need to catalog petitioner's arguments and painstakingly address them. As the Court of Appeals for the Fifth Circuit has remarked: "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v Commissioner, 737 F.2d 1417 (5th Cir. 1984).

Because the petition fails to state a claim upon which relief can be granted, we will grant respondent's motion to dismiss. See Scherping v Commissioner, 747 F.2d 478 (8th Cir. 1984); Rules 34(a)(1), 123(b).

Section 6673(a) (1) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of $25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the [⊥2] taxpayer's position in such proceeding is frivolous or groundless. Although we will not impose a penalty on petitioner in this case, we will take this opportunity to admonish petitioner that the Court will consider imposing such a penalty should she return to the Court and advance similar arguments in the future.

Upon due consideration and for cause, it is hereby

ORDERED: That respondent's Motion to Dismiss For Failure to State a Claim Upon Which Relief Can be Granted, filed September 13, 2004, is granted and this

case is dismissed on the ground the petition fails to state a claim upon which relief can be granted. It is further

ORDERED AND DECIDED: That petitioner is liable for a deficiency of $177,239.47 in Federal income tax for 2002 and additions to tax under sections 6651(a)(1) and 6654(a) in the amount of $39,878.88 and $5,922.81, respectively.

/s/ Joel Gerber

Joel Gerber
Chief Judge

ENTERED: **OCT 26 2004**

Tax Court Sua Sponte "Discovery" Order

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CATHY J. O'CONNOR,	)	
Petitioner	)	
v.	)	Docket No. 13596-04.
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent	)	

ORDER

Upon due consideration of the respondent's Motion to Dismiss for Failure to State a claim upon Which Relief Can Be Granted, filed September 13, 2004, and for cause, it is

ORDERED that the petitioner shall on or before October 4, 2004, file with the Court an amended petition in which she sets forth with specificity each error she alleges was made by the respondent in the determination of the deficiency and separate statements of every fact

upon which petitioner bases the assignment of each error. It is further

ORDERED that the respondent's motion to dismiss is calendared for hearing at the Motions Session commencing at 10:00 a.m., on October 20, 2004, in United States Tax Court, Tax Court Courtroom, Third Floor, 400 Second Street, N.W., Washington, D.C. 20217. This Order constitutes official notice to the parties.

The parties are reminded of the applicability of Tax Court Rule 50(c), which provides for the submission of a written statement in lieu of, or in addition to, attendance at the hearing.

> In order that the hearings be scheduled as efficiently as possible, if either party believes that the hearing will extend beyond 30 minutes, that party shall so notify the Clerk of the Court by letter or by telephone at least 48 hours in advance of the Motions Session. [⊥2]

Any document submitted to the Court should reflect in bold print immediately beneath the docket number that it relates to the "Motions Session" of the Court and the date of said session.

(signed) Joel Gerber

Joel Gerber
Chief Judge

Dated: Washington, D.C.
September 15, 2004

Rule 14.1(i)(ii)—Companion Case: Appellate Opinion and Judgment

United States Court of Appeals
Fifth Circuit
F I L E D
March 29, 2006
Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-60552
Summary Calendar

RICHARD JOHN FLORANCE, JR.,

Petitioner-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee

Appeal from the United States Tax Court
(11782-03 and 18209-03)

Before KING, WIENER and DeMOSS, Circuit Judges.

PER CURIAM: *

Proceeding pro se, Petitioner-Appellant Richard John Florance, Jr., appeals adverse rulings of the United States Tax Court. We note that, in addition to rulings against Florance on all substantive issues, the Tax Court imposed sanctions grounded primarily in the frivolousness of his cases and the actions he took in prosecuting them. Now,

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

in addition to seeking our affirmance of the Tax Court in all respects, Respondent-Appellee Commissioner of Internal Revenue asks us to impose sanctions against Florance for bringing a frivolous appeal.

Based on our review of the record on appeal, including the rulings and reasoning of the Tax Court and its imposition of sanctions, the operative facts and the appellate briefs of the parties, we too conclude that the Tax Court correctly ruled in favor of the Commissioner on all substantive matters as well as sanctions, and that Florance's contentions there as here are wholly without merit.

Turning to sanctions for a frivolous appeal, the Commissioner has clearly made a case for their imposition, and Florance has failed to file a response or opposition thereto. Noting the sanctions already imposed by the Tax Court, and further noting that Florance is before us pro se, we decline to assess further monetary penalties. We do, however, order the Clerk of this Court to refuse to accept for filing any further pleadings or other instruments received from Florance or on his behalf without first obtaining authorization of a judge of this court.

- AFFIRMED; ORDER ISSUED PROHIBITING FUTURE FILINGS. **

** [N.B.: There very well may be matters to address when that bridge is crossed. If the present ruling, as stated, prevents a meltdown in DOJ, then there's value in this ruling. CJO]

Rule 14.1(i)(ii)—Companion Case: Trial Court Opinion and Judgment

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SCOTT WALLIS,	)	
Petitioner	)	
v.	)	Docket No. 8244-04
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent	)	

ORDER OF DISMISSAL AND DECISION

This case was calendared for the March 14, 2005, Trial Session in Dallas, Texas. No appearance was made by or on behalf of petitioner. Counsel for respondent appeared before the Court and filed a motion to dismiss for lack of prosecution. Upon due consideration, and for reasons further appearing in the transcript of this case, it is

ORDERED that respondent's motion to dismiss for lack of prosecution, filed March 14, 2005, is granted, and this case hereby is dismissed for lack of prosecution. It is further

ORDERED AND DECIDED that there is a deficiency in income tax due from petitioner as follows:

Year	Deficiency	Penalty under I.R.C. § 6651(a)(1)	Penalty under I.R.C. § 6654
2000	$3,503.00	$ 875.75	$187.11
2001	$7,628.00	$1,907.00	$304.82

(Signed) Maurice B. Foley

Maurice B. Foley
Judge

ENTERED: **NOV 30 2005**

Rule 14.1(i)(ii)—Companion Case: Trial Court Motion

UNITED STATES TAX COURT

SCOTT WALLIS,	)	
Petitioner	)	
v.	)	Docket No. 8244-04
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent	)	

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND TO IMPOSE A PENALTY UNDER I.R.C. § 6673

RESPONDENT MOVES, pursuant to the provisions of Tax Court Rule 40, that the Court dismiss this case for failure to state a claim upon which relief can be granted, and that the Court find in its order that there are due from Petitioner deficiencies in income tax and additions to tax for the years and in the amounts set forth in the Notices of Deficiency dated February 18, 2004, upon which Notices this case is based. [1]

IN SUPPORT THEREOF, Respondent respectfully states: [⊥ 2]

1. Respondent, in the Notices of Deficiency issued to Petitioner on February 18, 2004, copies of which are attached as Exhibits A and B, respectively, determined deficiencies and additions to tax for the 2000 and 2001 tax years as follows:

---

[1] Respondent made significant concessions in the Answer. Respondent seeks only the deficiencies and additions to tax set forth in the Answer and paragraph two of this motion.

Year	Deficiency	§ 6651 Addition to tax	§ 6654 Addition to tax
2000	$35,197.00	$8,799.25	$1,880.05
2001	$52,808.00	$13,202.00	$2,110.39

2. Subsequent to the issuance of the Notices of Deficiency, Respondent received additional information from Petitioner and determined that the deficiencies and additions to tax should be adjusted downward. Respondent issued the revised findings for 2000 and 2001 in two letters dated May 7, 2004, copies of which are attached as Exhibits C and D, respectively. In these letters, Respondent determined deficiencies and additions to tax for the 2000 and 2001 tax years as follows:

Year	Deficiency	§ 6651 Addition to tax	§ 6654 Addition to tax
2000	$3,503.00	$875.75	$187.11
2001	$7,628.00	$1,907.00	$304.82

3. Respondent, in the revised findings issued to Petitioner as set forth above, determined deficiencies and additions to tax for the 2000 and 2001 tax years based upon [1 3] income received by Petitioner from interest and debt cancellation.

4. On May 18, 2004, Petitioner filed a Petition with this Court and alleged a disagreement with the Notices of Deficiency and revised deficiency letters. The Petition, a copy of which is attached as Exhibit E, is not in conformance with Tax Court Rule 34(b).

5. Tax Court Rule 34(b) provides in pertinent part that the petition in a deficiency action shall contain "clear arid concise assignments of each and every error which the Petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability. ... Any issue not raised in the assignment of errors shall be deemed to be conceded."

6. Petitioner's assignment of errors, upon which this case is based, alleges several frivolous constitutional arguments, including, but not limited to:

(a) Collections agents are working for an undisclosed principle and/or an undisclosed fiduciary; therefore there is no duty to pay taxes.

(b) There is no basis for the penalties or interest asserted. [⊥ 4]

(c) The Secretary has not signed the Notices of Deficiency nor has the Secretary submitted any other statements or claims to the Petitioner.

7. Petitioner makes no material allegations of fact in support of any of the errors assigned in the Petition but argues only vaguely stated law and legal conclusions therein.

8. No justiciable error has been alleged in the Petition with respect to the Commissioner's determination set forth in the Notices of Deficiency or revised deficiency letters and no facts in support of any such error are apparent therein. The absence in the Petition of specific justiciable allegations of error and of supporting facts permits this Court to grant Respondent's Motion. Tax Court Rule 123(b). Carskadon v. Commissioner, T.C. Memo. 2003-237; Bernsdorff v. Commissioner, T.C. Memo. 1994-634; Klein v. Commissioner, 45 T.C. 308 (1965); Goldsmith v. Commissioner, 31 T.C. 56 (1958).

9. The document filed in this case is not a proper petition, but rather is a statement making frivolous constitutional arguments with no factual basis. Petitioner's positions are totally without merit. This Court and other Federal Courts have repeatedly upheld the validity of the Federal income tax laws against such challenges. Michael v. [⊥ 5] Commissioner, T.C. Memo. 2003-26; Johnson v. Commissioner, T,C. Memo. 1999-312; Abrams v. Commissioner, 82 T.C. 403 (1984).

10. The document filed as the Petition does not comply with the Rules of the Tax Court as to the form and content of the Petition and fails to state a claim upon which relief can be granted.

11. Petitioner merely filed this Petition as a protest to paying income taxes. Furthermore, Petitioner has filed excessively burdensome and frivolous documents with the Court such as Petitioner's Objection to Rule 50, Petitioner's Objection to Rule 120, a *Pollock I* Notice, Wallis' First Notice of Lien on Judge Joel Gerber, and Wallis' Second Notice of Lien on Respondent's Counsel, copies of which are attached as Exhibits F, G, H, I and J, respectively. Such action falls within the bounds of I.R.C. § 6673, based on the fact the Petitioner has instituted these proceedings primarily for the purpose of delay and the Petitioner's position in the case is groundless and frivolous. Respondent requests the Court impose § 6673 sanctions in an amount it deems appropriate as the Court has done so in other such frivolous cases.

12. Pursuant to I.R.C. § 7491(c), Respondent bears the burden of production in any court proceeding with respect to the imposition of penalties and additions to tax. [⊥ 6]

a.) Respondent asserts that Petitioner is liable for I.R.C. 6651(a) (1) additions to tax for the 2000 and 2001 tax years. Attached as Exhibits K and L are certified MFTRA-X transcripts for Petitioner's 2000 and 2001 tax years, respectively, showing that Petitioner failed to file federal income tax returns for the 2000 and 2001 tax years.

b.) Respondent asserts that Petitioner is liable for I.R.C [2] § 6654 additions to tax for the 2000 and. 2001 tax years. The MFTRA-X transcripts of Petitioner's accounts for 2000 and 2001 (Exhibits K and L) show. that Petitioner failed to make any

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[2] N.B. As such in the original.

estimated income tax payments in those years. Additionally, attached as Exhibit M is a certified IRPTR transcript for Petitioner's 1999 tax year showing that Petitioner had an income tax liability for the 1999 tax year and is not excepted from making estimated tax payments toward the 2000 tax year under I.R.C. § 6654(e)(2). [⊥ 7]

WHEREFORE, Respondent prays that this Motion be granted and that this Court impose sanctions in an appropriate amount pursuant to I.R.C. S 6673.

DONALD L. KORB
Chief Counsel
Internal Revenue Service

Date: FEB 0 4 2005 By: */s/ Brook R. Barrow*
BROOK R. BARROW
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Associate Area Counsel
(Small Business/Self-Employed, Area 6) [⊥ 8]

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND TO IMPOSE A PENALTY UNDER I.R.C. § 6673 was served on Petitioner by mailing the same on FEB 0 4 2005 in a postage paid wrapper addressed as follows:

Scott Wallis
[appropriate address]

Date FEB 0 4 2005 */s/ Brook R. Barrow*
BROOK R. BARROW
Senior Attorney
(Small Business/Self-Employed)
Tax Court Bar No. RB0206

Rule 14.1(i)(iii)—Rehearing

No rehearing sought or granted.

Rule 14.1(i)(iv)—Judgment of different date

No judgment of date different from the opinion.

Rule 14.1(i)(v)—Statutes and Rules

See language included in the petition.

Rule 14.1(i)(vi)—Additional Essential Materials

This Record is rather short. Nothing else is included here.